U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8469940

Date: MAY 28, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a wireless engineer, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner earned a doctorate in electrical engineering at the University [redacted] in 2016, and is now chief technology officer of [redacted] a startup company in [redacted] Washington, that he co-founded.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met three criteria, summarized below:

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

The Director found that the Petitioner had authored scholarly articles and participated as a judge of the work of others, but had not shown that he made original contributions of major significance. Upon review, we conclude that the Petitioner has satisfied all three claimed criteria.

The regulation at 8 C.F.R. § 204.5(h)(3)(v) requires evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. To satisfy this criterion, the Petitioner relies on letters, citations to his published work, and other evidence.

The Petitioner's former Ph.D. advisor at the University [redacted] who is also a co-founder of [redacted], states that the Petitioner's "development of a working phone and camera that do not require batteries is . . . an exceptional breakthrough. The phone is powered entirely by using [redacted] signals and tiny solar panels . . . . [The Petitioner's] research represents an enormous step forward in making smart devices more efficient and useful." The battery-free devices derive their power from solar cells and [redacted] from devices such as televisions and cellular phones.

Heavy citation of scholarly articles can serve as one measure of the significance of a researcher's contributions.[1] A Google Scholar printout shows triple-digit citations for five of the Petitioner's published articles at the time of filing. One of his articles about [redacted] had been cited nearly 500 times since its publication about five and a half years earlier, placing it within the top 0.01% of engineering articles published in 2013, or the top 0.1% of computer science articles from that year.[2]

Other articles also ranked highly in terms of citations. In the period immediately following publication, these percentile figures often say little; a very low number of citations can rate highly during that initial period. But as years go by, the gulf widens between the most-cited articles and those with lower levels of impact. The Petitioner's early articles have remained near the top of the citation rankings, indicating sustained significance rather than a short-lived burst of attention immediately after publication. Subsequent submissions show that the citation figures for the Petitioner's most-cited articles continue to grow.

Copies of some of the citing articles emphasize the originality of the Petitioner's contributions, rather than representing an early adoption of methods or theories originating elsewhere. These articles cite a variety of earlier sources, as is typical of scholarly articles, but a number of them specify that the Petitioner's 2013 article "introduced" [redacted] a low-power communications medium. The record further establishes that other researchers acknowledge the Petitioner's significant influence on their own later efforts.

Beyond citations in scholarly journals, the mainstream press has taken notice of the Petitioner's work, with articles appearing in publications such as *Fortune*, *Forbes*, and the *Telegraph*, as well as the Reuters news service. Some of these articles identify the Petitioner by name. These articles do not specify the nature of the Petitioner's role in the research described, but other materials in the record serve that purpose.

The record establishes that the Petitioner has made original contributions of major significance.

As the Petitioner has demonstrated that he satisfies three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

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[1] *See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 8 (Dec. 22, 2010), https://www.uscis.gov/legal-resources/policy-memoranda.

[2] At different times, the Petitioner has placed his articles within both of those areas; the record does not establish how Clarivate Analytics (which compiled the percentile charts) classifies the Petitioner's specific field of research or the journals in which the Petitioner's articles appeared.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[3] In this matter, we determine that the Petitioner has not shown his eligibility.

The Petitioner has satisfied three of the criteria, which necessitates a final merits determination. In the final merits determination, the crucial issue is not the significance or usefulness of the Petitioner's past work, but rather the extent of the acclaim he has earned in the field.

The Petitioner has peer-reviewed manuscripts submitted for publication in various journals, and for presentation at conferences. The Petitioner contends that these journals "enlist the services of only the most accomplished researchers," but the Petitioner does not submit evidence to this effect from the publishers of the journals in question.

The Petitioner notes that his "research has been cited by researchers from . . . prestigious and widespread institutes. . . . These widespread citations are proof of [the Petitioner's] sustained international acclaim." Science is inherently an international endeavor, and the Petitioner has not established that only acclaimed researchers tend to be cited outside of their home countries, or that researchers at prestigious institutions typically cite only top-ranked authors.

Above, we have given due consideration to the volume of citations that the Petitioner's work has amassed. The identities and geographic distribution of the citing authors are not self-evident indicia of sustained acclaim.

The record shows that the Petitioner's work has drawn interest from a variety of observers, ranging from fellow researchers who seek technical information about the Petitioner's experiments to a conservation group that inquired about using the technology to track endangered rhinoceros. The nature of the potential practical applications of the Petitioner's work, however, is not tantamount to sustained national or international acclaim.

Furthermore, the technology at the center of the Petitioner's work appears to be at a very preliminary and tentative stage. Documents in the record show that [redacted] prepared a report for NASA, concerning possible avionics applications for the company's technology, but those materials do not show that NASA actually adopted the technology.

[3] *See also USCIS Policy Memorandum PM 602-0005.1*, *supra*, at 4 (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

Likewise, contracts in the record between [redacted] and various clients refer to prototypes and feasibility studies. Most of the contracted delivery dates occurred before the petition's filing date in January 2019, but the record does not establish the extent to which these projects have progressed beyond the prototype stage.

The Petitioner has established his involvement in innovative and important research, but the recognition arising from that work does not appear to have risen to the level of sustained national or international acclaim.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. Here, the Petitioner has not shown the required sustained national or international acclaim consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.